THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

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WRIT APPEAL NO:1195 OF 2005

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Dated: 28-07-2005

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The Management of APSRTC,rep. By

Vice-Chairman & Managing Director,

APSRTC,Mushirabad, Hyderabad and two others.

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… Appellants

And

P.Somanadham,S/o Ramalaxmaiah,

E-31507, Depot Clerk (Retd.) APSRTC

Hayathnagar Deport, R.r.District.

… Respondent

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

-

WRIT APPEAL NO:1195 OF 2005

ORDER (Per the Honourable Smt.Justice T.Meenakumari)

This appeal is preferred by the A.P.S. R.T.C. against the order of the learned single Judge passed in W.P.No:19455 of 2001, dated 10th November, 2004, by which the writ petition is allowed with the observations as mentioned therein.

The respondent is the writ petitioner. He filed the writ petition seeking for a direction more particularly in the nature of writ of mandamus, to the appellants to pay the balance gratuity amount of Rs.72,095/- treating the period from 16.12.1967 to

5.10.1985 as on duty as per the award of the Labour Court in I.D.No:38 of 1981 on the file of the Additional Industrial Tribunal-cum- Additional Labour Court, Hyderabad and also to direct the appellants to pay the terminal benefits of encashment for the period from 27.12.1973 to 6.10.1985.

As a matter of fact, the writ petition is allowed in terms of an un reported judgment of this Court in W.P.No:17438 of 2001, which was confirmed by a Division Bench of this Court in W.A.No:1125 of 2002, dated 22.8.2003. Following the said judgment, the learned single Judge has directed the appellants to treat the remove period of the petitioner as qualified service for the purpose of payment of gratuity and earned leave and calculate the amount payable to the petitioner and release the same within a period of three months from the date of receipt of a copy of that order. Aggrieved by the same, the present appeal is preferred by the appellants.

Heard the learned counsel on either side.

It is submitted by the learned Standing Counsel for the appellants that the petitioner is not entitled to calculate earned leave for the period he was out of service and that leave can be earned only during the period spent on duty as per Regulation 7 of the A.P.S. R.T.C. Employees' (Leave) Regulations and therefore, the order of the learned single Judge, needs interference by this Court.

On the other hand, it is contended by the learned counsel for the petitioner that the direction issued to the appellants, is only in terms of the judgment of a Division Bench of this Court and as such, the order of the learned single Judge, does not warrant any interference by this Court.

We have perused the material available on record and the order impugned herein.

On a perusal of Regulation-7 of the A.P.S. R.T.C. Employees' (Leave) Regulations, it is crystal clear that leave shall be earned by duty only. In this regard, it is not out of place to mention that it is an admitted fact that the petitioner was out of service for nearly 12 years. If that being the case, he is not entitled for credit of any earned leave. Therefore, We have no hesitation to hold that the order of the learned single Judge, is liable to be set aside in so far as the granting of earned leave, is concerned in view of the fact that the petitioner was not in service for nearly 12 years. However, the remaining findings of the learned single Judge need no

interference.

Subject to the modification as indicated above, this writ appeal is disposed of.

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(T.MEENAKUMARI, J)

28th JULY, 2005

(P.LAKSHMANA REDDY,J)

gurc/rkk

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI

&

THE HON'BLE SRI. JUSTICE P.LAKSHMANA REDDY

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WRIT APPEAL NO:1195 OF 2005

(Order delivered by the Honourable Smt.Justice T.Meena Kumari)

28TH JULY, 2005.